IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 11597 of 2004

Between:

P.Hemalatha Krupachari W/o.Late Sri P.Krupachari
Residential Junior College Committee, Kolakalur, Tenali Mandal, Guntur District.

..... PETITIONER

AND

1. The Commissioner and Director of Intermediate Education, Government of A.P.Hyderabad.
2 Smt.M.Mrudhubhashini W/o.Late Sri P.N.Prema Chari
R/o.Kolakalur Village, Tenali Mandal, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying this Honourable Court to issue writ, order or direction more particularly in the nature of writ of Mandamus declaring the action of the 1st respondent in issuing order Dt.23.6.2004 in RC.No.Admn.1B-2/175/2004 approving the appointment of the 2nd respondent as correspondent of residential junior College, Kolakalur, Guntur district without issuing any notice or opportunity of hearing as arbitrary illegal and violative of principles of natural justice and consequently set aside the same and to pass such other order.

Counsel for the Petitioner:MR.P.PRABHAKAR RAO

Counsel for the Respondent No.1: GP FOR HIGHER EDUCATION

Counsel for respondent No.2 : K.S.Murthy

The Court made the following :

O R D E R:

Brief facts of the case are that after the death of the husband of the petitioner who worked as Secretary & Correspondent of Babu Jagajjivanram Residential Junior College Committee, Kolakalur, Guntur District, by proceedings in R.C.No.1250/JC5-3/97, dated 04.08.1997, the petitioner herein was appointed in his place. Pursuant to the representation made by the petitioner, dated 02.07.1997, the appointment of the petitioner was approved by the 1st respondent-Commissioner & Director of Intermediate Education, Government of Andhra Pradesh, Hyderabad. Surprisingly, without informing the petitioner, the 1st respondent issued the impugned order, dated 23.06.2004 approving the appointment of the 2nd respondent as Correspondent of the College. Hence, the present writ petition is filed stating that the impugned order is not sustainable as the same is against the principles of natural justice.

The 1st respondent filed counter by stating that as required under Section 24(1) & (2) of the A.P.Education Act, the Management has submitted the proposals for approval and change of Correspondent of the Residential Junior College, Kolakalur, Guntur District, as per the resolutions passed by the Managing Committee. The Rule does not contemplate issuance of notice or giving opportunity before the change is

approved. The Rule is only pre-requisite for approving the Correspondentship by proper quorum. It is also stated that the writ is filed only due to the internal disputes. Hence, this writ petition is devoid of merits.

The 2nd respondent filed counter by stating that the bye-laws clearly state that the term of the Managing Board consisting of President, Vice President, Secretary & Correspondent is for a period of three years. Bye-Law VII (1) & (2) reads as follows:

1. "The Managing Board consisting of the President, the Vide-President, the Secretary & Correspondent, the Assistant Secretary, the Treasurer, the Assistant Treasurer and three other shall function for a period of three years. The next election of the Managing Board shall be held before December 1980. Total Executive Members are nine.

2. The Secretaryship & Correspondentship of the Committee should be hereditary to Sri P.Benjamin."

It is also stated in the counter that as per the Bye-Laws, the Correspondentship shall be hereditary to the lineage of Benjamin. The petitioner was duly invited for the meeting held on 19.05.2004, but she was absent from the election process. As the turn of the petitioner has been expired, she has no right to question the election proceedings.

The learned counsel for the petitioner submits that change of Correspondentship of the petitioner without giving any notice to him and the approval of the 2nd respondent as Correspondent, is illegal and against the principles of natural justice. He relied on a decision of a learned Single Judge of this Court reported in ***P.JAGANNADHA RAO VS. COMMISSIONER & DIRECTOR OF SCHOOL EDUCATION, GOVT. OF A.P., HYDERABAD,*** wherein this Court held that though Section 24(2) of the Andhra Pradesh Education Act 1982 (hereinafter called as 'Act') is silent with regard

to providing an opportunity to the existing Correspondent, the notice is required to the existing Correspondent. It is also submitted that election of the Correspondent by the Managing Committee is different from the process of approval by the competent authority under Section 24(2) of the Act.

The petitioner is not at all questioning the election process before this Court. His only contention is that it is the duty of the approving authority whether the conduct of the election process is a fair manner or not and if any notice is issued to the petitioner by the 1st respondent, she would have placed the entire material along with the objections by showing that why the appointment of a newly elected Correspondent shall not be approved. In paragraph 5 of the decision of this Court in ***P.JAGANNADHA RAO VS. COMMISSIONER & DIRECTOR OF SCHOOL EDUCATION, GOVT. OF A.P., HYDERABAD (Supra-1)*** it is observed as follows:

> "*As power exists under Section 24(2) of the A.P.Education Act and this provision is silent with regard to providing an opportunity and notice to the existing correspondent no notice was issued to him. It is clear that power for appointment of a correspondent or charge of correspondentship under Section 24 of the Act is a statutory power. In the absence of statutory prescription, excluding the principles of natural justice. The seminal principle of natural justice* ***audi alterm partem*** is implicated and is not excluded by mere statutory silence, Vide AIR 1981 SC 818, Swadeshi Cotton Mills Vs. Union of India) AIR 1978 SC 587 (Maneka Gandhi Vs. Union of India). As demonstrably the impugned order had been issued by the first respondent without notice and opportunity to the writ petitioner, who as a consequence of this order has clearly suffered adverse civil consequences, the order is vitiated for violation of the principles of natural justice. The dispute between the petitioner and the 4th respondent as to who ought to be the correspondent of the school is outside the province of this writ petition. Such dispute, if any, have to be adjudicated in an appropriate forum. It is within the jurisdiction, province and competence of the first respondent to determine the appropriate person to be appointed as a correspondent of Sri Victoria Aided

> Upper Primary School, Rajahmundry, but before effecting any change in the correspondentship, the first respondent is obligated at least to provide a minimal opportunity to the writ petitioner."

For the aforesaid reasons, I am of the opinion that the above said principle applies to the present case. Hence, the order under challenge has to be set aside on the sole ground that it has not been preceded by an opportunity to the writ petitioner. The 1st respondent is at liberty to afford an opportunity to the before taking any action under Section 24 of the Act, which might impact the writ petitioner with adverse civil consequences.

The writ petition is accordingly allowed setting aside the impugned order directing the 1st respondent to issue notices to the petitioner as well as the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order and pass appropriate orders in accordance with Law within a period of two weeks from the date of submitting the explanation by the writ petitioner and the 2nd respondent, if any. No costs.

01.09.2004

c.c.in one week

B/o

tjs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner and Director of Intermediate Education, Government of A.P.Hyderabad.
2. The G.P.For Higher Education, High Court of A.P., Hyderabad.

2.2CD copies

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